

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

OMAR CRUZ TAXTHO,)
)
Petitioner,)
)
v.) 1:25CV38
)
) 1:23CR224-4
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

O R D E R

Petitioner, a federal prisoner, submitted a Motion to Vacate, Set Aside, or Correct Sentence (Docket Entry 95) along with supporting documents pursuant to 28 U.S.C. § 2255. This Motion cannot be further processed for the following reason:

1. Portions of Petitioner's Motion and other filings are illegible due to what appears to be an issue with the printer used to prepare them. All filings must be readable in order for the Government to respond and the Court to decide the Motion.

Because of this pleading failure, the Motion would normally be dismissed without prejudice to Petitioner filing a new motion properly following the 28 U.S.C. § 2255 forms and correcting the defects of the present Motion. However, it appears that Petitioner is near or beyond the time limit for filing a § 2255 motion and the statute of limitations can be tolled only in very narrow circumstances, see Holland v. Florida, 560 U.S. 631, 649 (2010). Therefore, the Court will instead file this action, strike the current Motion, and allow Petitioner

time to resubmit his Motion in a form that complies with this Court's rules.¹ Failure to do so will result in the dismissal of this action without prejudice to Petitioner filing a proper § 2255 motion. To further aid Petitioner, the Clerk is instructed to send Petitioner new § 2255 forms and instructions for filing a § 2255 motion, which Petitioner should follow.

IT IS THEREFORE ORDERED that the Clerk is instructed to send Petitioner § 2255 forms and instructions.

IT IS FURTHER ORDERED that this action be filed, that the current § 2255 Motion (Docket Entry 95) along with Petitioner's Memorandum (Docket Entry 96) and Declaration (Docket Entry 97) and be stricken as illegible, and that this action is stayed for thirty (30 days) to give Petitioner time to file a corrected motion on the proper § 2255 forms. This matter should be referred for further screening upon submission of a new motion.

FAILURE TO COMPLY WITH THIS ORDER IN A TIMELY MANNER WILL RESULT IN DISMISSAL WITHOUT PREJUDICE OF THIS ACTION WITHOUT FURTHER NOTICE TO PETITIONER.

This, the 23rd day of January, 2025.

/s/ Joe L. Webster

United States Magistrate Judge

¹To the extent there are any issues regarding the running of the statute of limitations in this case, the parties can litigate those issues following any resubmission by Petitioner.